Supreme Court, U.S.
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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

LEONARD R. WOOD, SR.,
Petitioner,

vs.

THE STATE OF OHIO,
Respondent.

On Petition For Writ Of Certiorari
To The Ohio Supreme Court

PETITION FOR WRIT OF CERTIORARI

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28 pp

QUESTION PRESENTED FOR REVIEW

WHETHER THE PETITIONER IS DENIED DUE PROCESS UNDER THE FIFTH (DOUBLE JEOPARDY) AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION WHEN THE STATE UNILATERALLY DISMISSES A TWO-COUNT CRIMINAL INDICTMENT AFTER A HUNG JURY, THEN PROSECUTES THE PETITIONER ON FOUR COUNTS FOR THE SAME CONDUCT.

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PETITION FOR WRIT OF CERTIORARI

Peitioner respectfully prays that a Writ of Certiorari issue to review the Judgment of the Ohio Supreme Court on August 4, 1999, denying review of the issues raised concerning his conviction in this case, previously affirmed by written opinion by the Richland County Court of Appeals, Fifth Appellate District on March 17, 1999. Undersigned counsel respectfully submits that to the best of his knowledge the style of this case accurately reflects all parties having an interest in its outcome.

OPINIONS BELOW

Petitioner timely appealed his judgment of conviction and sentence to the Richland County, Ohio, Court of Appeals, Fifth Appellate District. By Judgment of March 17, 1999, that Court affirmed the Petitioner's conviction and sentence.

Petitioner timely filed a Memorandum in Support of Jurisdiction to the Ohio Supreme Court to review the judgment of the Richland County Court of appeals. The Ohio Supreme Court denied leave to appeal by Entry on August 4, 1999.

These orders appear in full in the Appendix hereto.

JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1257(a). This Petition was timely filed within ninety days of the date of the Ohio Supreme Court's Judgment Entry of August 4, 1999.

CONSTITUTIONAL PROVISIONS

The Fifth Amendment to the United States Constitution provides in pertinent part:

> [No person shall] be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of its laws.

STATEMENT OF THE CASE

This case involves the alleged rape of a minor child by her father, Leonard Wood, Sr., the Petitioner. On April 4, 1996, the Petitioner was indicted on one count of attempted rape. That indictment was dismissed by the prosecution on July 8, 1996.

On July 9, 1996, the Petitioner was indicted on two counts of rape in Richland County, Ohio, Common Pleas Case Number 96-CR-410D. The indictment alleged that the rapes occurred between January 1, 1996 and January 31, 1996.

A jury trial commenced on March 6, 1997. The jury was unable to reach a unanimous verdict and the Court declared a mistrial.

On April 22, 1997, the prosecution filed a motion to dismiss case number 96-CR-410D, on the grounds that the Petitioner was re-indicted under Case No. 97-CR-179D. On April 22, 1997, the trial court granted the state's motion. The Judgment Entry included the hand-written words: "without prejudice." The indictment in case number 97-CR-179D alleged four counts of rape, one count for each of the following dates: January 15, 16, 17, and 18, 1996.

On May 9, 1997, defense counsel filed a Motion to Dismiss and Discharge on the grounds that Petitioner would twice be placed in jeopardy in contravention of the Ohio and

United States Constitutions. The trial court overruled the motion.

A second jury trial commenced on May 16, 1997. The jury found Petitioner guilty on all four counts as charged in the third indictment. On May 21, 1997, the trial court proceeded to sentence the Petitioner to four consecutive terms of incarceration of six to twenty-five years.

On July 25, 1997, a timely Notice of Appeal was filed with the Richland County, Ohio, Court of Appeals, Fifth Appellate District. On March 17, 1999, the Fifth District Court of Appeals affirmed the convictions and sentence. *State v. Wood*, Richland County App. No. 97-CA-60, unreported (March 17, 1999). (Appendix hereto). The Petitioner then timely filed a Memorandum in Support of Jurisdiction in the Ohio Supreme Court which was denied without opinion on August 4, 1999. (Appendix hereto).

The federal question of which the Petitioner seeks review was raised in the trial court and in both of the appellate courts. The federal question presented for this court's review is whether Petitioner's was due process right not to be put in jeopardy twice for the same offense was violated when the prosecution unilaterally dismissed the original indictment after a mistrial due to a hung jury, and then re-indicted Petitioner on additional counts for the same conduct. This question was first raised at the trial court level by defense counsel's Motion to Dismiss and Discharge filed May 9, 1997, which was overruled.

The question was then presented to the Richland County, Ohio, Court of Appeals, Fifth District in Mr. Wood's Brief and Assignments of Error. That Court affirmed the conviction and sentence, stating:

> We have reviewed the record, and we find appellant's guilt or innocense of the offenses of which he was accused was never determined

> in the first case, and for this reason the dismissal of the first indictment and the filing of the second did not prevent a trial on double jeopardy grounds.

Wood, at 7.

The question was then properly raised to the Ohio Supreme Court in Petitioner's Memorandum in Support of Jurisdiction in Proposition of Law No. I. (Appendix hereto). The Ohio Supreme Court denied the Petitioner's leave to appeal without opinion.

REASONS FOR GRANTING THE WRIT

Petitioner Was Denied Due Process Under The Fifth (Double Jeopardy) And Fourteenth Amendments To The United States Constitution When The State Unilaterally Dismissed A Two-Count Criminal Indictment After A Hung Jury, Then Prosecuted The Petitioner On Four Counts For The Same Conduct.

A. *Reason to grant the writ.*

The Petitioner submits that the action by the prosecutor, and sanctioned by the trial court, was a grievous violation of Petitioner's right not to be put in jeopardy twice for the same offense. The Ohio appellate courts decided this important question of federal law which has not been, but should be, settled by this Court.

B. *Facts.*

This case involves the alleged rape of a minor child by her father, the Petitioner Leonard Wood. The complaining witness described four incidents of alleged intercourse. She claimed one incident occurred on each of consecutive days January 15, 16, 17, and 18, 1996. There were no corroborating witnesses.

Mr. Wood was tried twice for these accusations. The first trial was declared a mistrial when the jury was deadlocked on. The trial court granted the state's unilateral motion to dismiss the indictment that was the subject of the trial, and to proceed on a new indictment which contained two additional counts of rape. Petitioner was convicted of four counts of rape at the second trial.

C. *Argument.*

The Fifth Amendment to the United States Constitution provides, in pertinent part:

> ... nor shall any person be subject for the same offense be twice put in jeopardy of life or limb...

This provision is known as the Double Jeopardy Clause. The Double Jeopardy Clause of the Fifth Amendment is made applicable to the states as incorporated through the due process clause of the Fourteenth Amendment. *Benton v. Maryland*, 395 U.S. 784 (1969). The Double Jeopardy Clause protects a defendant in a criminal proceeding against multiple punishments or repeated prosecutions for the same offense. *See United States v. Wilson*, 420 U.S. 332, 343 (1975). This Court explained the rationale behind the Double Jeopardy Clause as follows:

> The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.

Green v. United States, 355 U.S. 184, 187-88 (1957).

It is true that the declaration of a mistrial due to a hung jury is not itself an occurrence which bars a retrial. *United States v. Sanford*, 429 U.S. 14 (1976). That is not the situation here. In this case the state moved to dismiss the indictment on which the Petitioner was tried. Without a finding of manifest necessity, the trial court granted the state's motion and allowed a retrial under a new indictment. The prosecutor's dismissal was, in effect, a *nolle prosequi* of the indictment in Case No. 96-CR-410. Under these circumstances, this Court should rule that the dismissal constituted an acquittal such that the Double Jeopardy Clause operates to bar further proceedings against the Petitioner.

This Court has recognized instances where a dismissal, after jeopardy attached, may be treated the same as a mistrial and further prosecution is not barred by double jeopardy, but this is only where the dismissal has been sought or initiated by the defendant for a reason unrelated to the factual determination of guilt or innocence. In *United States v. Scott*, 437 U.S. 82 (1978), this Court held that double jeopardy does not bar a new trial after a trial court's dismissal, predicated on the defendant's motion on a ground unrelated to guilt or innocence. Justice

Rehnquist, writing for the majority of a divided Court, stated, *supra* at 98-99:

> We think that in a case such as this the defendant, by deliberately choosing to seek termination of the proceedings against him on a basis unrelated to the factual guilt or innocence of the offense of which he is accused, suffers no injury cognizable under the Double Jeopardy Clause if the Government is permitted to appeal from such a ruling of the trial court in favor of the defendant...[W]e conclude that the Double Jeopardy Clause, which guards against government oppression, does not relieve a defendant from the consequences of his voluntary choice...[I]n the present case, respondent...was...neither acquitted or convicted, because he himself undertook to persuade the trial court not to submit the issue of guilt or innocence to the jury which had been impaneled to try him.

The facts and holding in *Scott, supra,* do not directly apply to this case since the Petitioner herein did, indeed, submit the question of his guilt or innocence to a jury. The jury was unable to find Petitioner guilty. The government is not appealing an adverse ruling, since the Petitioner did not move for the mistrial or to dismiss the case. Instead, the government dismissed the case, after jeopardy attached, and tried the Petitioner for the same conduct but with twice the potential penalty. This is the type of unfairness that the Double Jeopardy Clause was designed to prevent. As Justice Brennan observed in the dissenting opinion in *Scott, supra,* at 105:

> [T]he policies of the Double Jeopardy Clause mandate that the government be afforded but one complete opportunity to convict an accused and that when the first proceeding terminates in a final judgment favorable to the defendant any retrial is barred. The rule as to acquittals can only be understood as simply an application of this larger principal. (Footnote omitted.)

Despite the fact that the majority of the Court in *Scott* allowed retrial of the defendant on remand from the appellate court, the principles enunciated by both the majority and dissent apply to the instant case so as to bar further proceedings. The crucial distinguishing factor in *Scott* is the fact that the dismissal of the proceedings therein was due to action on the part of the defendant, not the government. Here, the action was dismissed by the government's own motion.

It has been held that after a trial has begun with the jury sworn and jeopardy has attached, a dismissal of the prosecution absent the defendant's consent operates as an acquittal, and is a bar to a subsequent prosecution for the same offense. *McCarthy v. Zerbst*, 85 F.2d 640 (1936), cert. den. 299 U.S. 610. This Court has held that the termination of the trial has no such effect if, for instance, the defendant consents to the termination or it was justified by "manifest necessity' such as a hung jury. *Richardson v. United States*, 468 U.S. 317 (1984); *United States v. Perez*, 22 U.S. 579 (1824). Therefore, if the case herein had been reset for trial on the same indictmen, double jeopardy would not bar the retrial. Since, however, the government dismissed the indictment, without the consent of the defendant, and without a manifest necessity therefore, double jeopardy must be a bar to further proceedings.

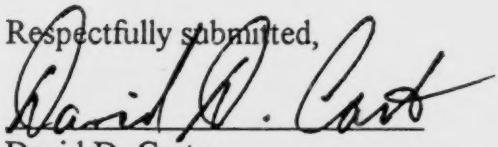
Further, not only is the government's action unconstitutional because it violates the Double Jeopardy Clause,

but also because it fails the due process test of "fundamental fairness." *United States v. Lovasco*, 431 U.S. 783 (1977). When determining whether the state's action violate "fundamental fairness," judges should determine whether that action violates those "fundamental conceptions of justice which lie at the base of our civil and political institutions," *Mooney v. Holohan*, 294 U.S. 103, 112 (1935), or which define " the community's sense of fair play and decency," *Rochin v. California*, 342 U.S. 165, 170 (1952). Here, the Petitioner was subjected to the rigors of a trial on two counts of rape. At least one member of the jury was not convinced of Petitioner's guilt. Prior to a second trial, the state dismissed the indictment, and charged Petitioner with two additional counts of rape. Under the *Mooney* and *Rochin* test, it is clear that the state's action violates "fundamental conceptions of justice," and "the community's sense of fair play and decency." This Court must review the government's unconscionable actions and allow the writ.

CONCLUSION

For these reasons and to prevent a manifest miscarriage of justice, Petitioner prays that a writ of Certiorari issue to review the judgment of the Ohio Supreme Court.

Respectfully submitted,



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APPENDIX

99-LW-1660 (5th)

STATE OF OHIO, Plaintiff-Appellee
v.
LEONARD R. WOOD, SR., Defendant-Appellant

Case No. 97-CA60
5th District Court of Appeals of Ohio, Richland County.
Decided March 17, 1999

Criminal appeal from the Richland County Court of Common Pleas, Case No. 97CR179D

Hon. John W. Wise, P.J., Hon. W. Scott Gwin, J., Hon. W. Don Reader, V.J. (Sitting by Supreme Court Assignment)

For Plaintiff-Appellee: JAMES J. MAYER, JR., 38 South Park St., Mansfield, OH 44902

For Defendant-Appellant: DOUGLAS R. SEXTON, 233 Marion Avenue, Mansfield, OH 44903

OPINION

Gwin, J.

Defendant Leonard R. Wood, Sr., appeals a judgment of the Court of Common Pleas of Richland County, Ohio, which convicted and sentenced appellant on four counts of rape in violation of R.C. 2907.02, after a jury found him guilty. Appellant assigns five errors to the trial court:

ASSIGNMENTS OF ERROR

THE COURT COMMITTED REVERSIBLE ERROR WHEN IT REFUSED TO PROVIDE THE DEFENDANT WITH THE INTAKE SUMMARY OF THE STATE'S WITNESS, LINDA BIDDLE, AFTER AN IN-CAMERA REVIEW.

THE COURT COMMITTED REVERSIBLE ERROR WHEN IT OVERRULED THE DEFENDANT'S MOTION FOR A NEW TRIAL ON THE BASIS OF JUROR MISCONDUCT.

THE COURT COMMITTED REVERSIBLE ERROR WHEN IT OVERRULED THE DEFENDANT'S MOTION TO DISMISS AND DISCHARGE THE DEFENDANT ON THE BASIS OF DOUBLE JEOPARDY.

THE COURT COMMITTED REVERSIBLE ERROR WHEN IT OVERRULED THE DEFENDANT'S MOTION TO SUPPRESS STATEMENTS GIVEN TO THE RICHLAND COUNTY SHERIFF'S OFFICE WHILE THE DEFENDANT WAS CONFINED IN A MENTAL INSTITUTION.

THE COURT COMMITTED REVERSIBLE ERROR WHEN IT OVERRULED THE DEFENDANT'S MOTION TO EXCLUDE POLYGRAPH REPORT AND THE TESTIMONY OF SERGEANT REIGLE

AND THE DEFENDANT'S MOTION TO INSTRUCT THE JURY TO DISREGARD SAID POLYGRAPH REPORT AND SAID TESTIMONY.

The record indicates the appellant raped his thirteen year old slightly
retarded daughter, Sherry, on four occasions.

I

At trial, the State presented the evidence of Linda Biddle, a social worker from the Richland County Children's Services, who investigated Sherry's allegations of sexual abuse. As part of her investigation, Biddle prepared an intake summary including statements Sherry made. Defense counsel requested a copy of the intake summary so he could cross-examine the alleged victim regarding inconsistencies in the story she told Biddle and her testimony at trial. The court conducted an in camera review of the intake statement out of the presence of the prosecutor and the defense counsel, and found it was not a witness statement. The court ruled the defendant was not entitled to disclosure of the summary.

Appellant argues Crim. R. 16 permits him to discover all evidence of which the prosecutor is aware, which is favorable to the defendant and material either to the issue of guilt or punishment. As appellant correctly points out, the rule is a codification of the United States Supreme Court directive in Brady v. Maryland (1963), 373 U.S. 83 and United States v. Bagley (1985), 473 U.S. 667.

Here, defense counsel filed a discovery motion prior to trial, but during the course of the trial, Biddle revealed she had

completed an intake summary, which consisted of her notes taken during the interview of the alleged victim. It is undisputed there are factual inconsistences between the summary and the victim's trial testimony, including whether or not one of the rapes occurred on
a school day or a holiday, some of the positions and places where the rapes occurred, and allegations to Biddle of certain sexual acts which were not mentioned at trial. Appellant argues the inconsistencies should have been revealed to the defense so the victim might have been cross-examined on those matters, particularly because the credibility of the minor victim was a key part of the prosecution's case.

As the Supreme Court noted in Brady, supra, the question is not whether the defendant would have received a different result, but whether, by not receiving the evidence, the defendant was deprived of a fair and reliable trial.

The State argues appellant was not deprived of a fair and reliable trial, because the State's case did not depend just on the testimony of the victim, but rather, on a great deal of other evidence. Appellant confessed that Sherry was telling the truth, and explained that the rapes occurred because he was "horny" having just gotten out of Massillon State Hospital. The State produced evidence the defendant had failed a polygraph examination. The State also presented medical evidence in support of the allegations.

First of all, the Ohio Supreme Court has held the court must conduct an in camera inspection of a statement in the presence of counsel, and permitting them to participate, see State v. Daniels (1982), 1 Ohio St. 3d 69. Crim. R. 16 requires defense attorney and prosecuting attorney be present and participate to determine the existence of an inconsistencies. In State v.

Shnipper (1986), 22 Ohio St 3d 158, the Supreme Court noted the inconsistencies must be directed to the essential issues of the trial, and not irrelevant detail.

We have reviewed the record, and we find the court should have provided the witness statement to counsel so appellant could effectively cross-examine the victim and Biddle regarding the event. However, we also find, pursuant to the U.S. Supreme Court directive in Brady, supra, the reliability of appellant's trial was not undermined by the court's omission, and thus, we conclude the court did not commit prejudicial error herein.

The first assignment of error is overruled.

II

In his second assignment of error, appellant urges the court committed prejudicial error in overruling his motion for a new trial. Appellant asserts shortly after the jury found appellant guilty, trial counsel received an anonymous letter from one of the jurors, indicating the juror had believed
appellant was innocent but was pressured by the other jurors to sign the verdict form. Counsel investigated, identified the juror, and obtained her affidavit in support of the motion for new trial.

Ohio Evid. R. 606 (B), commonly known as the aliunde rule, requires a challenge to the validity of the verdict to contain evidence outside the jury room. The rule embodies the tradition of protecting and preserving the integrity of jury deliberations by declaring jurors to be generally incompetent to testify as to any matter directly pertinent to the jury's deliberations, in order to protect the finality of the verdict and to insulate jurors from harassment by the losing party, see State v. Schiebel (1990), 55 Ohio St. 3d 71.

In order to impeach a verdict with former juror testimony, the challenger must establish a foundation of independent and extraneous evidence, including evidence from sources other than the jurors themselves, see Wicker v. Cleveland (1948), 150 Ohio St 434.

The trial court found the allegations in the juror's affidavit here, were insufficient to set aside a verdict. The court noted the defense was offered an opportunity to have the jurors polled on the verdict before they were dismissed, but counsel declined. The court indicated this particular juror
spoke with the judge immediately after the jury was discharged, and in no way indicated she was uncomfortable with the decision just rendered.

In Schlibel, supra, the Supreme Court reminded us our standard of reviewing a court's ruling on a motion for new trial is the abuse of discretion standard. The Supreme Court has frequently defined the term abuse of discretion as implying the court's attitude is unreasonable, arbitrary, or unconscionable, see State v. Adams (1980), 62 Ohio St 2d 151 at 157.

We have reviewed the record, and we find the trial court did not abuse its discretion in overruling the motion for new trial.

The second assignment of error is overruled.

III

Appellant's first trial in this matter ended with a hung jury. The court discharged the jury and declared a mistrial sua sponte. The prosecution moved to dismiss the original indictment, and re-indicted the defendant. Appellant moved to dismiss and discharge based upon double jeopardy, and the court overruled

his motion.

Appellant's first indictment contained two counts of rape, while the second indictment charged four counts of rape, occurring on January 15, 16, 17, and 18, of 1996. Appellant argues the State may not dismiss a two-count indictment upon which the jury was unable to reach a verdict and then re-indict upon a four-count indictment charging new offenses.

Appellant concedes a mistrial because of a hung jury is not an occurrence which bars a re-trial, but, he urges the prosecution did not re-try him on the original indictment, but rather doubled the potential penalty he faced by adding counts. Appellant also urges dismissal of the first indictment operated as an acquittal, and thus, he cannot be retried on either the new indictment or the old one.

In State v. Broughton (1991), 62 Ohio St 3d 253, the Ohio Supreme Court found where the trial judge in the first trial does not contemplate an end to the prosecution of the defendant, and did not make a decision regarding the guilt or innocense of the defendant, there is no bar to retrial. The State cites us to State v. Richardson (1984), 468 U.S. 317, wherein the United States Supreme Court found a mistrial due to a hung jury is not an event which terminates the original jeopardy and triggers double jeopardy problems.

We have reviewed the record, and we find appellant's guilt or innocense of the offenses of which he was accused was never determined in the first case, and for this reason the dismissal of the first indictment and filing of the second did not prevent a trial on double jeopardy grounds.

The third assignment of error is overruled.

IV

Next, appellant challenges the court's refusal to suppress certain statements appellant made to investigating officers. Appellant filed a motion to suppress all statements made to law enforcement officials on February 20, 1996.

On that day, Sergeant McBride of the Richland County Sheriff's office contacted appellant while he was confined in Richland Hospital, a mental health hospital in Richland County. Appellant made three separate statements. After making the first statement, the appellant indicated he no longer wished to talk about the incidents. Thereafter, there is approximately a forty minute gap
not recorded on the tape recorder, during which time appellant alleges he and Sergeant McBride discussed the matter. Sergeant McBride later started the tape recorder again and did not reissue the warnings required by the United States Supreme Court in Miranda v. Arizona (1966), 384 U.S. 436. Instead, the officer merely began to take another statement from appellant. As the second statement
drew to a close, the appellant struck Sergeant McBride's hand and knocked the tape recorder away, which the court found was as indication appellant wished to stop. There is another five minute gap, whereupon Sergeant McBride turned the tape recorder back on and took a third taped statement from appellant.

The court ruled the officer did not have to give the Miranda warnings again, and the second statement was voluntary.

Appellant points out he may invoke his right to remain silent at any time, and once he has indicated his wish, new Miranda warnings must be given so he may decide if he wishes to

intelligently waive his rights and make another statement.

The State notes appellant was not in custody on February 20, 1996, and appellant initiated the contact with Officer McBride. McBride informed appellant that he was not under arrest, but Mirandized him before taking the initial statement. In fact, the most incriminating statements were made during the unrecorded interval.

The court cited State v. Roberts (1987), 32 Ohio St. 3d 225, as authority for the proposition the initial Miranda warnings were effective to protect appellant's rights, and the court applied the totality of the circumstances test to determine if the statements were voluntary with regard to the second segment. The court suppressed the statements contained in segment three, after appellant
slapped the tape recorder out of Sergeant McBride's hand.

We have reviewed the record, and we find nothing to support appellant's argument he was coerced or otherwise forced into making the second taped statement. Appellant asks us to speculate regarding what occurred during the time the tape recorder was not playing.

We find the trial court did not err in overruling appellant's motion to suppress some of the statements he made on February 28. Accordingly, the fourth assignment of error is overruled.

V

In his final assignment of error, appellant urges the court erred in overruling his motion to exclude the polygraph report and the testimony of the polygraph examiner because the charts and graphs on which the polygraph examiner relied were not

admitted into evidence.

In State v. Souel (1978), 53 Ohio St. 2d 123, the Ohio Supreme Court set forth the requirements for admissibility of the results of a polygraph test. The conditions include a written stipulation made by the prosecutor or the defendant, and defense counsel providing for the defendant's submission to the test and for the subsequent admission at trial of the graphs and the examiner's opinion based upon the graphs.

At trial, the polygraph examiner testified at length regarding the graphs and charts from the polygraph examination, and appellant marked the charts as a defense exhibit. Neither the State nor the defense moved the exhibit be admitted into evidence, and as a result, appellant moved the court to exclude all evidence of the polygraph examination and instruct the jury to disregard the polygraph report and testimony.

As the State points out, nothing prevented appellant from asking for admission of the charts and graphs, and appellant closely cross-examined the polygraph expert regarding the results. Further, defense counsel established through cross-examination it requires an expert to review the polygraph examination charts and understand what the results mean. Defense counsel established the jurors would be unable to look at the charts and determine what they meant.

We find appellant was not prejudiced by the omission of the polygraph examination charts, particularly after extensive discussion of the charts and the results both on direct and cross.

The fifth assignment of error is overruled.

For the foregoing reasons, the judgment of the Court of

Common Pleas of Richland County, Ohio, is affirmed, and the cause is remanded to that court for execution of sentence.

Gwin, J., Wise, P.J., and Reader, V. J., concur

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The Supreme Court of Ohio

1999 TERM

State of Ohio,	:	
Appellee,	:	Case No. 99-860
vs.	:	
		ENTRY
Leonard Wood, Sr.,	:	
Appellant.	:	

Upon consideration of the jurisdictional memoranda filed in this case, the Court denies leave to appeal and dismisses the appeal as not involving any substantial constitutional question.

COSTS:
Docket Fee, $40.00, paid by Weldon, Huston & Keyser.

(Richland County Court of Appeals; No. 97CA60)

s/Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

FILED AUG 04, 1999
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO